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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

Date: AUG 10 2012 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:
[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for John Vaughan

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (Director). It is now before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a financial services company. It seeks to employ the beneficiary permanently in the United States as a human resources specialist. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The Director determined that the petitioner did not establish that it had the continuing ability to pay the beneficiary the proffered wage from the priority date of the visa petition up to the present. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. *See* 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that "[t]he job offer portion of an individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability."

U.S. Citizenship and Immigration Services (USCIS) must examine "the language of the labor certification job requirements" in order to determine what the job requires. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834.

The instant petition, Form I-140 was filed on July 20, 2009. At Part 2.d. of the Form I-140 the petitioner indicated that it was filing the petition for a member of the professions holding an

advanced degree or an alien of exceptional ability. The required education, training, experience, and special requirements for the offered position are set forth at Part H of the ETA Form 9089. In this case Part H shows that the position requires a bachelor's degree, or foreign educational equivalent, and 60 months of experience in the job offered. The petitioner will also accept an "edu. eval. by qual. eval. svc. or per 8 CFR 214.2(h)," in lieu of a master's or bachelor's degree, which would allow a beneficiary to qualify with less than a master's degree or a bachelor's degree and 5 years of experience. *In pertinent part, the regulation at* 8 C.F.R. § 214.2(h)(4)(iii)(D) provides as follows:

> Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty . . . .

This regulation applies to non-immigrant petitions seeking H-1B visas for temporary employees. It allows an alien's education to be combined with experience in the specialty for the purpose of evaluating the U.S. equivalency of the alien's education. Under the regulation foreign education amounting to less than a U.S. bachelor's degree plus experience in the specialty could be evaluated as equivalent to a U.S. bachelor's degree. In this case, therefore, the minimum requirements for the proffered position, as stated on the ETA Form 9089, do not require the beneficiary to have either a master's degree or a bachelor's degree and 5 years of experience. Thus, the petitioner has not established that the proffered position requires a professional holding an advanced degree, as stated on the Form I-140 petition. Accordingly, the petition cannot be approved.

The petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. The petitioner is a different entity from the employer listed on the labor certification. The Federal Employer Identification Number (FEIN) for the petitioner is [redacted] The FEIN for the employer that filed the labor certification is [redacted] A labor certification is only valid for the particular job opportunity stated on the application form. *See* 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not demonstrate that the job opportunity will be the same as originally offered. Accordingly, the petition

must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.